

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Casados	Team: Team # 5	CCRB Case #: 201305570	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/21/2013 10:20 PM, Saturday, 06/22/2013	Location of Incident: 1 Hugh J. Grant Circle	Precinct: 43	18 Mo. SOL 12/21/2014	EO SOL 12/21/2014	
Date/Time CV Reported Mon, 06/24/2013 8:05 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 06/24/2013 8:05 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Edwin Espinal	09609	934831	043 PCT
2. POM Julio Rodriguez	18676	942457	043 PCT
3. POM Johnfrank Tullo	13668	905198	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Edwin Espinal	Abuse: PO Edwin Espinal stopped § 87(2)(b)	
B.POM Edwin Espinal	Abuse: PO Edwin Espinal frisked § 87(2)(b)	
C.POM Edwin Espinal	Abuse: PO Edwin Espinal searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the Call Processing System on June 24, 2013 (encl. 5).

On June 21, 2013, at about 10:20 p.m., § 87(2)(b) walked from work to the Parkchester subway station in the Bronx and he was stopped by PO Edwin Espinal at 1 Hugh J. Grant Circle. The following allegations resulted:

- **Allegation A – Abuse of Authority: PO Edwin Espinal stopped § 87(2)(b)** Because § 87(2)(b), § 87(2)(g)
- **Allegation B – Abuse of Authority: PO Edwin Espinal frisked § 87(2)(b)** Because § 87(2)(b), § 87(2)(g)
- **Allegation C – Abuse of Authority: PO Edwin Espinal searched § 87(2)(b)** Due to § 87(2)(b), § 87(2)(g)
- § 87(2)(g), § 87(4-b)

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) a black man, 5'5" tall, 155 pounds, with black hair and brown eyes, was § 87(2)(b) old at the time of the incident. § 87(2)(b) is § 87(2)(b) § 87(2)(b)

CCRB Statement

§ 87(2)(b) left a CPS message on June 24, 2013 (encl. 5). He provided a telephone statement on June 25, 2013 (encl. 6). He was interviewed at the CCRB on August 7, 2013 (encl. 7). The following is his interview statement with any inconsistencies from his telephone statements noted:

On June 21, 2013, at about 10 p.m., § 87(2)(b) got off from work. He works at an § 87(2)(b) in the Bronx. That day, as confirmed by the time cards that § 87(2)(b) provided, he had worked from 12:30 p.m. to 10 p.m. § 87(2)(b) changed clothes, placed his work clothes in his backpack, and left § 87(2)(b) wearing an all-white button down shirt, blue jeans, a red cap, and a red and black backpack. § 87(2)(b) also had his time card in his front left pants pocket and his wallet with his identification in his back left pocket. He denied consuming any drugs or alcohol prior to leaving work.

§ 87(2)(b) walked to the Parkchester subway station for the 6 train, located at 1 Hugh J. Grant Circle. He was headed home. He said the walk from § 87(2)(b) to the subway station takes five to ten minutes. On his way there, he listened to music on his headphones from an MP3 player in his backpack. As he walked to the subway station, he did not stop and talk to anyone.

§ 87(2)(b) had difficulty describing where he tried to enter the subway station. He is not from the neighborhood and just goes to and from work. He said there are two entrances to the station, and he planned to go in the “back” one. The entrance he approached has one step, and then there is a set of double doors. There is always a fruit vendor with a cart standing outside that entrance at night, and he was there this night. § 87(2)(b) did not know the fruit vendor’s name but described him as a brown-skinned, possibly black man who may be Muslim because he wears a Kufi (a knit cap) and a robe and is about fifty years old.

Just before § 87(2)(b) reached the entrance, a plainclothes officer ran up to him and stopped in front of him. § 87(2)(b) identified the officer by name as PO Edwin Espinal. § 87(2)(b) did not know if PO Espinal had been trying to get his attention earlier because he had his headphones in but he turned his attention to PO Espinal once he was in front of him.

PO Espinal told § 87(2)(b) that he needed to search him because he had been told over the radio that someone in the area had a gun and matched § 87(2)(b)’s description. PO Espinal asked § 87(2)(b) where he was coming from and asked him for his identification. § 87(2)(b) gave PO Espinal his identification and told PO Espinal that the suspect could not have been him because he had just gotten off work minutes ago. § 87(2)(b) took out his time card and held it up to PO Espinal but PO Espinal did not look at it and “dismissed” what § 87(2)(b) was saying. At about this point, a uniformed officer arrived and stood beside PO Espinal. § 87(2)(b) described the uniformed officer – identified during this investigation as PO Johnfrank Tullo – as a “fat” white man, between 5’8” and six feet tall, over forty years of age, and weighing over two hundred pounds. PO Tullo never spoke to § 87(2)(b). § 87(2)(b) told PO Espinal that he would not consent to a search unless he let him hear over the radio the description of the suspect, and asked PO Espinal to state the description of the suspect as well. PO Espinal looked at § 87(2)(b) and said aloud that the suspect had on a white shirt, a red bag, and a red cap.

PO Espinal then frisked and searched § 87(2)(b) without his consent. PO Espinal patted § 87(2)(b)’s front and back waistband, placed his hands in each of § 87(2)(b)’s front and back pants pockets, and squeezed and felt all over § 87(2)(b)’s backpack. PO Espinal did not remove anything from § 87(2)(b)’s pockets and he did not enter § 87(2)(b)’s backpack. In contrast, § 87(2)(b) mentioned only being “pat-frisked” in his CPS message and denied that PO Espinal entered his pockets during his telephone statement.

The fruit vendor’s open boxes were about two feet away from § 87(2)(b). PO Espinal and PO Tullo peered into the boxes, but did not touch them. The officers did not find any contraband.

PO Espinal used his radio and said something to the effect that everything was good. § 87(2)(b) then noticed a dark-colored unmarked car parked close by against the curb. The car then drove away. § 87(2)(b) thought it was a police car because it had police-like antennas and the windows were tinted such that § 87(2)(b) could not see inside the car.

PO Espinal wrote down the information on § 87(2)(b)’s identification onto a piece of paper. § 87(2)(b) asked PO Espinal for his name and what precinct he was from. PO Espinal said, “Officer Espinal,” and he told § 87(2)(b) his precinct, but § 87(2)(b) could no longer recall what precinct it was. § 87(2)(b) in his CPS message, correctly stated that PO Espinal was assigned to the 43rd Precinct.) § 87(2)(b) continued to ask to hear the radio description of the suspect. PO Espinal obliged him, and the dispatcher stated over the radio that the suspect was a black man wearing a red-and-white sweater. § 87(2)(b) asked PO Espinal why he stopped him since that was not what he was wearing. PO Espinal shrugged his shoulders and did not answer. PO Espinal returned § 87(2)(b)’s identification, and they each parted ways.

§ 87(2)(b) was not summonsed or arrested, and he knew no witnesses other than the fruit vendor.

§ 87(2)(b)'s Work Time Card

The time card is on receipt paper, and by the time § 87(2)(b) was interviewed at the CCRB, the receipt paper had worn thin and his name could only be seen faintly on the original copy. Also, the photocopied version does not show his name at all, but it was printed on the original immediately below where it says "Time Card" (encl. 7F).

Attempts to Contact Civilian Witnesses

On February 20, 2014, and on March 21, 2014, the undersigned investigator went to 1 Hugh J. Grant Circle in an attempt to locate the fruit vendor, but he was not there either time (encl. 14).

On February 20, 2014, a coffee-cart vendor, who stands outside the east side entrance, stated that he had not seen the fruit vendor in several weeks but that the fruit vendor used to stand outside the west side entrance to the train station. The investigator took photographs of the east side and west side train station entrances (encl. 4G and 4H).

On March 21, 2014, the investigator spoke to a different fruit vendor, § 87(2)(b), at the intersection of Metropolitan Avenue and Hugh J. Grant Circle, and § 87(2)(b) stated that he did not witness the incident or know the fruit vendor who may have witnessed the incident. § 87(2)(b) further stated that he and the licensed vendors in the area work for § 87(2)(b) located at 1878A Cross Bronx Expressway.

The investigator spoke to an MTA booth agent, a black female, who declined to provide her name but stated that she did not witness the incident or know the fruit vendor.

The investigator went to § 87(2)(b) and spoke with § 87(2)(b) who declined to provide his last name. § 87(2)(b) stated that the fruit vendor who may have witnessed the incident might be a man who speaks Bengali only. § 87(2)(b) did not know the man's name or schedule and thought he was unlicensed to sell fruit. § 87(2)(b) agreed to call the investigator if he saw the man, and § 87(2)(b) introduced the investigator to two of his employees, both of whom declined to provide their names, but agreed to contact the investigator if they saw the fruit vendor.

The investigator took four more photos of the incident location: two at the intersection of Metropolitan Avenue and Hugh J. Grant Circle, a faraway photo of § 87(2)(b) and one of the west side entrance of the subway station that indicates that because of a wall beside the entrance, Metropolitan Avenue cannot be seen from that side (encls. 4I-4L).

NYPD Statements:

Subject Officer: PO EDWIN ESPINAL

- *PO Espinal, a § 87(2)(b) years old at the time of the incident.*
- *On the date of the incident, PO Espinal was assigned to Anti-Crime in the 43rd Precinct. He worked from 9:30 p.m. beginning on June 21, 2013, to 6:05 a.m. on June 22, 2013. He was dressed in plainclothes. He said he partnered with PO Julio Rodriguez only in an unmarked, black Impala, vehicle number 443. PO Espinal was the vehicle recorder.*

Memo Book

At 10:15 p.m., there was a 911 call for a 10-52 (a dispute) with a firearm at the corner of Archer Street and White Plains Road, and a large group was involved. He responded to the location to back up units 43A and 43J. The 911 caller described a suspect as a black male with a white or red T-shirt and a red hat, who had put a gun in a book bag and fled in an unknown direction. At 10:20 p.m., he stopped § 87(2)(b) at the corner of Hugh Grant Circle, opposite "45." § 87(2)(b) fit the description: he was a black male wearing a red hat and a white

T-shirt and he had a book bag. § 87(2)(b) was about to enter the train when he had made eye contact with the officers, turned around, and adjusted his waistband. The officers passed him and § 87(2)(b) turned back and started running across the street. § 87(2)(b) was observed with a suspicious bulge and PO Espinal frisked him but did not search him. The bulge turned out to be a soft object. PO Espinal frisked § 87(2)(b)'s book bag, which had the outline of a weapon, but it turned out to be a brush. PO Espinal felt the bristles of the brush but did not search the bag. PO Espinal identified § 87(2)(b) with his NYS license and wrote down his address and pedigree information. PO Espinal noted that § 87(2)(b) said, "I just came from that area but I wasn't with no big group of people." At 10:30 p.m., PO Espinal noted that he prepared a UF 250 in regard and the related SPRINT number was § 87(2)(b) (encl. 8).

CCRB Statement

PO Espinal was interviewed at the CCRB on August 30, 2013 (encl. 9).

On June 21, 2013, at about 10:15 p.m., PO Espinal and his partner, PO Julio Rodriguez, were driving on patrol in the 43rd Precinct. PO Rodriguez was the vehicle operator. Central stated over the radio that a large dispute had happened at the corner of Archer Street and White Plains Road, and during the course of the dispute a black man wearing a red hat and a red or white t-shirt had put a gun into a book bag. PO Espinal may have misheard Central's clothing description, who may have actually said a red and white t-shirt. PO Rodriguez thought Central did not tell him the color of the book bag, the age and body type of the suspect, and when the incident happened. The investigator asked PO Espinal if the incident had just happened or if it had happened days ago, and PO Espinal testified that he did not know, on advice of counsel.

PO Espinal could not recall where he and PO Rodriguez were when they received the assignment, but they drove toward Archer Street and White Plains Road. PO Espinal and PO Rodriguez took a particular route toward the location, driving toward Hugh Grant Circle and the closest subway station, the Parkchester station on the 6 train, because others tried to flee to that station after having committed crimes in the area. PO Espinal and PO Rodriguez were hoping to "intercept" the person who had put the gun into the book bag.

The officers reached Hugh Grant Circle and were turning north onto Metropolitan Avenue when PO Espinal observed a man standing on the northeast corner of Metropolitan Avenue and Hugh Grant Circle between two parked cars who fit the description of the person with the gun, subsequently identified as § 87(2)(b). The officers drove by § 87(2)(b) at a speed of about five to ten miles per hour, and PO Espinal saw § 87(2)(b) from about four feet away from his lowered passenger window. § 87(2)(b) was sweaty. PO Espinal thought § 87(2)(b) may have been sweaty because he ran from somewhere. § 87(2)(b) a black man, was wearing a red hat, a white shirt, and he had a book bag of an unrecalled color. PO Espinal and § 87(2)(b) made eye contact and § 87(2)(b) ducked down between the parked cars. The officers drove forward and § 87(2)(b) peeked out and looked toward the officers.

PO Espinal told his partner "back up, back up," and the officers drove backward toward § 87(2)(b). § 87(2)(b) jogged across the street toward the subway station entrance.

The officers stopped their vehicle and PO Espinal got out and moved toward § 87(2)(b). PO Espinal could not recall if PO Rodriguez ever got out and interacted with § 87(2)(b).

PO Espinal hurried toward § 87(2)(b) but did not say anything until he reached him. He got in front of § 87(2)(b) and said, "Police, police." PO Espinal had his shield out on a necklace.

When PO Espinal got in front of him, § 87(2)(b) asked PO Espinal why he was being stopped. PO Espinal told him that he fit the description of a person who was seen with a gun at Archer Street and White Plains Road, he told him what the suspect was reportedly wearing, and he told him about how people often flee to the Parkchester subway station after committing a

crime in the area. PO Espinal asked § 87(2)(b) where he was coming from and where he was going. § 87(2)(b) said he had come from his house, which was close by Archer Street and White Plains Road, and that he was on his way to work. PO Espinal told § 87(2)(b) he wanted him to provide his identification but that he did not have to. § 87(2)(b) provided his identification, which indicated he lived on Brook Avenue and is not in the 43rd Precinct. PO Espinal thought § 87(2)(b) was not telling the truth about where he was coming from. PO Espinal could not recall from where § 87(2)(b) obtained his identification. § 87(2)(b) did not show a work time card.

At some point after stopping § 87(2)(b) though PO Espinal could not recall when, PO Espinal saw two suspicious bulges on § 87(2)(b). One of the bulges was on § 87(2)(b)'s front pants pocket, although he could not recall whether the bulge was on § 87(2)(b)'s left or right side. He could not describe the dimensions or shape of that bulge. However, he thought the bulge was a weapon. In the interview, he was asked what type of weapon and he could not say. He thought it was a weapon based on the 911 call, § 87(2)(b)'s matching description, and on § 87(2)(b)'s actions when the two of them had made eye contact. PO Espinal observed the second bulge on § 87(2)(b)'s book bag. PO Espinal could not recall if § 87(2)(b) was wearing the book bag at the front of his person or on his back. PO Espinal could not recall when he first saw this bulge and he could not remember what his view of § 87(2)(b)'s book bag was in order for him to be able to see this bulge. PO Espinal could not describe the dimensions of the bulge on the book bag, but when pressed about what the bulge on the book bag looked like he said he thought it was a small-caliber gun because the bulge had a similar outline to that of a hair brush.

PO Espinal patted § 87(2)(b) only on the areas where he observed the bulges, his pants pocket and the bulge on the book bag. He never searched § 87(2)(b). He felt the bulge on his pants pocket and it was soft. He did not know what it was but based on its softness, he determined it was not a weapon. He felt the bulge on the book bag and it was stiff but he felt brush bristles and determined it was a hair brush.

§ 87(2)(b) asked PO Espinal for his name and shield number, and PO Espinal said, "My shield is right here, and my name is Officer Espinal." PO Espinal also pointed to his shield, and § 87(2)(b) appeared to read the number.

PO Espinal still thought that § 87(2)(b) had been involved in the situation at Archer Street and White Plains Road but, because there was no witness available to identify him, he decided to release § 87(2)(b) without arrest or summons.

PO Espinal later prepared a Stop, Question, and Frisk Report for § 87(2)(b). PO Espinal could not recall if a fruit vendor was standing close by when the incident happened, and he could not recall if any officer approached him and § 87(2)(b) mid-stop.

Subject Officer: PO JOHNFRANK TULLO

- *PO Tullo, a § 87(2)(b) years old at the time of the incident.*
- *On the date of the incident, PO Tullo was assigned to Conditions in the 43rd Precinct. He was dressed in uniform. He worked from 9:30 p.m. on June 21, 2013, until 6:05 a.m. on June 22, 2013. He partnered with PO Espinal and PO Rodriguez in an unmarked Chevy sedan, vehicle number 443. PO Tullo rode in the back seat.*

Memo Book

PO Tullo did not make an entry about § 87(2)(b) or any other entries about the relevant time period. At 9:30 p.m., he was present for duty at the 43rd Precinct stationhouse. At 10:15 p.m., he was assigned to a vehicle with PO Rodriguez and PO Espinal (encl. 10).

CCRB Statement

PO Tullo was interviewed at the CCRB on October 17, 2013 (encl. 11).

PO Tullo, at the start of the interview, stated that he did not remember the incident and therefore did not know if he was present for it. He was then shown a color photograph of § 87(2)(b) and he did not recognize him. However, when PO Tullo was informed that § 87(2)(b) presented his work time card during the incident, PO Tullo's memory was partially refreshed. PO Tullo still had a limited memory of the incident, however.

PO Tullo stated that an incident involving a gun was stated over the radio by the dispatcher – “a gun run.” PO Tullo recalled that the incident was in the vicinity of the Parkchester subway station in Hugh Grant Circle, but PO Tullo could not recall if that is where the suspect was or if that was where the suspect fled to. PO Tullo could not recall anything else that was stated over the radio.

When the radio assignment came over, PO Tullo, PO Espinal, and PO Rodriguez were at the stationhouse, and right after, the three of them got into an unmarked police car and headed toward Hugh Grant Circle. PO Tullo rode in the back of the police car.

PO Tullo next recalled that someone was stopped in relation to the gun run inside the Parkchester subway station in Hugh Grant Circle. PO Tullo could not recall having seen the person who was stopped earlier on, such as when he was headed into the subway station. PO Tullo could not recall for sure that the person who was stopped was § 87(2)(b). PO Tullo described the person who was stopped as a short black man, about 5'4" or 5'5" tall, and he had on a baseball cap and a backpack. PO Tullo could not recall what else the person was wearing. PO Tullo thought the person was stopped in the mezzanine of the subway station, either by a station exit or by the station agent booth. PO Tullo could not recall the way the person was stopped, only that no force was used against him and that he was not handcuffed. PO Tullo maintained that the person was stopped because he fit the description of the suspect from the gun run. PO Tullo could not specify when during the incident he approached. He stated that he was the last officer to exit the car. He could not recall any discussion among officers before approaching the person.

After the person was stopped, he was told he fit the description of a suspect with a gun and that he was in the same location. The stopped person was upset and stated he had just come from work. The person then presented his work time card and asked to be told the description over the radio of the suspect. PO Tullo could not recall which officer had the most interaction with the person but PO Tullo said it was not him. Either PO Rodriguez or PO Espinal then let the person hear the description of the suspect over the radio.

PO Tullo could not recall how the situation ended aside from that the person was not arrested. He could not recall if the person was frisked, searched, or if his bag was frisked. He did not recall if the person's identification was ever obtained or if the person had ever asked PO Espinal for his name. PO Tullo did not see any bulges under the stopped person's clothing and the person made no furtive movements in PO Tullo's presence.

Subject Officer: PO JULIO RODRIGUEZ

- *PO Rodriguez, a § 87(2)(b) old at the time of the incident.*
- *On the date of the incident, PO Rodriguez was assigned to Anti-Crime in the 43rd Precinct. He worked from 9:30 p.m. on June 21, 2013, until 6:05 a.m. on June 22, 2013. He thought he was dressed in uniform and worked in an unmarked vehicle, a black Impala. He did not know where he was seated in the vehicle. He partnered with PO Espinal and PO Tullo.*

Memo Book

PO Rodriguez made no entries about § 87(2)(b). His first entry was at 9:51 p.m. and he noted that he was at the 43rd Precinct stationhouse doing administrative work. At 10:20 p.m., he was assigned a motor vehicle. The next entry is at 2:58 a.m., when an unknown supervisor – whose name is not legible – signed his memo book (encl. 12).

CCRB Statement

PO Rodriguez was interviewed at the CCRB on October 2, 2013 (encl. 13). The interview recording began at 8:29 a.m. There was confusion about the date of the incident so the interview was paused so PO Rodriguez could confer with his attorney about the correct date of incident. The interview began again at 8:33 a.m.

PO Rodriguez stated he did not interact with § 87(2)(b) and thus did not know what happened to him. At the time of the incident, at about 10 p.m. on June 21, 2013, PO Rodriguez stated that based on his memo book, he was still at the 43rd Precinct stationhouse, and he said he was not assigned a vehicle until 10:20 p.m. PO Rodriguez was informed that PO Espinal, his listed partner, had conducted the stop of § 87(2)(b) at about that time. PO Rodriguez was asked why his partner was out conducting operations when he was at the stationhouse, and PO Rodriguez testified that he could not guess about his partner's whereabouts and that he could only state where he was, on advice of counsel. PO Rodriguez maintained that he was at the stationhouse at the alleged time of incident. PO Rodriguez could not recall if he was at roll call with PO Espinal and PO Tullo at the start of his tour and he could not recall entering the vehicle at about 10:20 p.m. with his partners.

PO Rodriguez was told the specifics of the case and he could not recall having been involved. He did not recall responding to a radio assignment for a black man who was wearing a red or white t-shirt who had put a gun into a book bag. He was not involved in the stop of someone who had presented his work time card. PO Rodriguez was shown a color photograph of § 87(2)(b) and he did not recognize him.

Other Evidence

Google Maps Printouts

From Archer Street and White Plains Road, the location where the suspect put the gun in the book bag, to 1 Hugh J. Grant Circle, the location where § 87(2)(b) was stopped, is a nine-minute walk or four-tenths of a mile (encl. 4A).

From § 87(2)(b) the location where § 87(2)(b) lives, to 1 Hugh J. Grant Circle is a one-hour and one minute walk or three miles (encl. 4E).

NYPD Documents

911 Communications CD and Event Chronology

According to the 911 Communications CD, at 10:04 p.m., an anonymous man calls 911 and reports that people are fighting at Archer Street and White Plains Road. The caller states that he is watching from his car, and he says that a black man with a white shirt was arguing with about twenty people and the man put a gun into his book bag. The caller hangs up without identifying himself.

A dispatcher then states over the radio that there is a report of a "52" [a 10-52 is a dispute] involving a firearm at White Plains Road and Archer Street. The dispatcher describes the suspect as a "male black with a gun." The dispatcher repeats the description of the suspect: a male black wearing a red or white sweater. The dispatcher says that unit 43-Adam is responding and that 43-Eddie is "backing" them. A short while later, 43-Adam says he arrived at the location and reports there is a large group there. A 43rd Precinct Impact Sergeant states that no further units are needed at the location. The dispatcher repeats the description of the suspect as a male black wearing a red or white sweater and says he put a gun in his book bag. A male officer, who identifies himself as

“43-Crime,” asks for another description of the suspect. The dispatcher tells him that the alleged suspect is a black male possibly wearing a red or white sweater and he has a gun in his book bag. 43-Crime asks for the description again. The dispatcher provides the same description. 43-Crime asks if the perpetrator was also wearing a red hat, and the dispatcher says he has no further description other than what he already provided (encl. 15A).

The Event Chronology is consistent with the 911 Communications CD and indicates that the event was closed as “non-crime corrected” at 10:25 p.m. (encl. 15B-15C).

Stop, Question, and Frisk Report Log

The investigation obtained the log for all Stop, Question, and Frisk Reports prepared in the 43rd Precinct from June 21, 2013, to June 24, 2013, and there is no indication that one was prepared for § 87(2)(b) (encl. 16).

43rd Precinct Roll Call

According to the Tour 1 roll call for June 22, 2013, which began on June 21, 2013, PO Espinal and PO Rodriguez were assigned to Anti-Crime and PO Tullo was assigned to Conditions (encl. 17).

Status of Civil Proceedings

- § 87(2)(b) has not filed a notice of claim with the City of New York as of March 4, 2014, with regard to the incident, which is past the expiration date to have done so (encl. 18).

Civilian Criminal History

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 3).

Subject Officers’ CCRB Histories

- PO Espinal has been a member of the service for nine years, PO Tullo has been a member of the service for twenty years, and PO Rodriguez has been a member of the service for seven years. There are no substantiated CCRB allegations against any of them (encl. 2).

Conclusion

Allegation Not Pleaded

A refusal to provide name and command was not pleaded against PO Espinal because § 87(2)(b) said that when he asked PO Espinal for his name and command, PO Espinal answered him correctly. § 87(2)(b) then gave that information to the CCRB. Thus there was not an allegation of misconduct.

Identification of Subject Officers

§ 87(2)(b) identified PO Espinal by name, rank, and command, and stated he was in plainclothes. PO Espinal admitted that he was the officer who initiated § 87(2)(b)'s stop, that he frisked him, and that he identified himself for § 87(2)(b). § 87(2)(b) claimed that PO Espinal searched him as well. Based on that, allegations of stop, frisk, and search of person were pleaded against PO Espinal. PO Espinal said he completed a Stop, Question, and Frisk Report

concerning his interaction with § 87(2)(b) but one was not yielded by the investigation.

§ 87(2)(g), § 87(4-b)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Edwin Espinal stopped § 87(2)(b)

§ 87(2)(b) stated that he had just gotten off work, located at § 87(2)(b) in the Bronx, and he walked from there to the Parkchester subway station, located in Hugh Grant Circle. He estimated that he walked from work to the station in less than ten minutes. At the CCRB, he supplied his work time card to prove he had just gotten off work. The time card establishes that § 87(2)(b) clocked out of work at exactly 10 p.m.

§ 87(2)(b) stated that he was stopped just before entering the station. At the time, he was wearing a red baseball cap, an all-white button-down shirt, and a red and black backpack. Furthermore, § 87(2)(b) is a black man, 5'5" tall, one hundred fifty-five pounds, with black hair, and he was § 87(2)(b) years old at the time of the incident.

§ 87(2)(b) stated that after he was stopped, he presented his work time card, but PO Espinal did not concern himself with it. At the end of the incident, PO Espinal let § 87(2)(b) hear the radio description of the suspect and § 87(2)(b) said the dispatcher said only that the suspect was a black man wearing a red and white sweater.

PO Rodriguez denied being present for the incident, and PO Tullo had a vague recollection of the incident. Nonetheless, PO Tullo said there was a gun assignment (the details of which he could not recall) and eventually § 87(2)(b) was stopped because he fit the description of the suspect and that § 87(2)(b) had presented a work time card.

PO Espinal made contemporaneous notes of the incident in his memo book. He noted that a suspect had put a gun into a book bag at Archer Street and White Plains Road, and he noted that the description of the suspect was a black man wearing a red or white shirt and a red hat. PO Espinal, at the CCRB, stated that it was possible he misheard the dispatcher, who may have actually said the suspect was wearing a red and white shirt. PO Espinal further noted that the suspect had fled in an unknown direction.

At the CCRB, PO Espinal stated he thought the dispatcher said nothing else, including when the incident happened, what else the person was wearing, and what the person's age and body type were. PO Espinal drove to Hugh Grant Circle, hoping to intercept the suspect before he fled on the train. At Hugh Grant Circle and Metropolitan Avenue, while driving at about five to ten miles per hour, PO Espinal observed § 87(2)(b) on his passenger side, about four feet away. PO Espinal thought § 87(2)(b) was the suspect because he was a black man wearing a red hat and a white shirt, he was carrying a book bag, and he was sweaty, possibly from fleeing. PO Espinal and § 87(2)(b) made eye contact and § 87(2)(b) ducked down between two parked cars. The officers drove forward a short way and § 87(2)(b) peeked out and looked toward the officers and then jogged away toward the train station. Based on the above, he stopped § 87(2)(b).

After stopping him, PO Espinal asked § 87(2)(b) where he was coming from and § 87(2)(b).

§ 87(2)(b) said from his home and that he was on his way to work. In addition, once § 87(2)(b) presented his license, PO Espinal learned that § 87(2)(b) lived in a different precinct. PO Espinal denied that § 87(2)(b) presented a work time card.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) was ultimately released without a summons or arrest. PO Espinal stated that he prepared a Stop, Question, and Frisk Report for the incident but the investigation did not find one.

According to GoogleMaps, Archer Street and White Plains Road is four-tenths of a mile, or a nine-minute walk, away from Hugh Grant Circle.

According to the 911 Communications CD, at 10:04 p.m., an anonymous man reported that he saw a black man wearing a white shirt place a gun in his book bag at White Plains Road and Archer Street. The dispatcher altered the description and stated that the suspect was a black man wearing a red or white sweater, and he provided this description over the radio four times. Neither the dispatcher nor the anonymous man described the bag or the suspect's age and body type, and though the dispatcher told "43-Crime" over the radio that he did not know if the suspect had a red cap on, PO Espinal added that description to his memo book entry.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

An anonymous tipster who provides a general description of a suspect that is lacking predictive information, does not provide reasonable suspicion for a stop. The officer must additionally observe criminal activity for the tip to be considered reliable. People v. William II, 98 N.Y.2d 93 (2002) (encl. 1A-1E).

§ 87(2)(b), § 87(2)(g)

Allegation B – Abuse of Authority: PO Edwin Espinal frisked § 87(2)(b)

It is undisputed that after PO Espinal stopped § 87(2)(b) PO Espinal frisked him. The frisk did not yield any contraband.

§ 87(2)(b) alleged that PO Espinal frisked his front and back waistband and squeezed and felt all over his backpack.

PO Tullo could not recall if § 87(2)(b) was frisked but stated that § 87(2)(b) had no bulges under his clothing and made no furtive movements.

PO Espinal, at an unrecalled point during the stop, observed § 87(2)(b) with two bulges: one in a front pants pocket and one in his book bag. PO Espinal could not recall which front pants pocket. He could not describe the dimensions or shape of the bulge. PO Espinal thought the bulge was a weapon. He was asked what type of weapon and he could not say. He thought it was a weapon based on the 911 call, § 87(2)(b)'s matching description, and based on § 87(2)(b)'s actions when the two of them had made eye contact. For the bulge in the book bag, PO Espinal could not recall if § 87(2)(b) was wearing the bag at the front of his person or on his back. PO Espinal could not recall when he first saw this bulge and he could not remember what his view of § 87(2)(b)'s book bag was to be able to see this bulge. PO Espinal could not describe the dimensions of the bulge on the book bag, but when pressed about it, he then said he thought it was a small-caliber gun because the bulge had a similar outline to that of a hair brush. PO Espinal patted § 87(2)(b) only on the areas where he observed the bulges, his pants pocket and the bulge on the book bag. He felt the bulge on his pants pocket and it was soft. He did not know what it was but based on its softness determined it was not a weapon. He felt the bulge on the book bag and it was stiff but he felt brush bristles and determined it was a hair brush.

§ 87(2)(b), § 87(2)(g)

An officer can frisk an individual if the officer has reasonable suspicion that the person is armed. People v. DeBour, 40 N.Y.2d 210 (1976) (encl. 1F-1P). An undefined bulge, which can be caused by many innocuous objects, does not provide reasonable suspicion that a person is armed. In the matter of David B., 172 A.D.2d 828 (2d. Dept. 1991) (encl. 1Q-1R).

§ 87(2)(b), § 87(2)(g)

Allegation C – Abuse of Authority: PO Edwin Espinal searched § 87(2)(b)

§ 87(2)(b) stated in his Call Processing System message that he was “pat-frisked.” He did not mention being searched. In his telephone statement, he said he was not searched. In his interview statement, he said PO Espinal searched his front and back pants pockets.

PO Espinal denied searching § 87(2)(b). PO Tullo had a vague recollection of the incident, and PO Rodriguez stated he was not there.

§ 87(2)(b) stated that a fruit vendor witnessed this incident and thus may have seen the alleged search. The undersigned investigator took two trips to the incident location in an attempt to find this witness. He was not there either time. The investigator talked to several people around the area, including other vendors who are consistently there, and they did not know the potential witness's name, contact information, or schedule, and had no reliable way to predict when he would be around as they see a man, who may or may not be the witness, with complete irregularity, but, more importantly, had not seen him for a prolonged period of time. The

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

Team: 5

Investigator: _____ Daniel Casados _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date